IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3045 OF 2004

IN

CRIMINAL APPEAL NO.840 OF 2004

Vajir Bapu Talwar .. Applicant

versus

State of Maharashtra .. Respondents

...

Mr.R.M. Momin for the applicant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 29th September 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP for the State.

2. The applicant is convicted u/s.366, 376, 363 of the IPC and sentenced to undergo 5 years RI. The prosecution case is that the prosecutrix was a minor

girl and therefore, the question of consent of the minor girl was immaterial. The trial Court has relied on the medical evidence for the purpose of coming to the conclusion that the prosecutrix was a minor. Apart from that, there is no other evidence which is adduced by the prosecution to show that she is a minor. Neither the birth certificate nor the School Leaving Certificate is produced by the prosecution. The trial Court has observed that from the evidence, it does appear that she was a consenting party. Since the only evidence on record in respect of her age is the medical evidence. In my view, this is a fit case where the applicant is entitled to be released on bail. The applicant was on bail in the trial Court.

3. The applicant to be released on bail on the same terms and conditions as imposed by the trial Court. He shall however furnish fresh bonds.

V.M.KANADE, J